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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARY ANN SUSSEX et al.,)	CASE NO: 2:08-cv-00773-MMD-PAL
)	
Plaintiffs,)	
)	NOTICE OF SUPPLEMENTAL
vs.)	AUTHORITY PERTINENT TO
)	DEFENDANTS' MOTION TO
TURNBERRY/MGM GRAND TOWERS,)	DISQUALIFY ARBITRATOR HARE
LLC, et al.,)	
Defendants.)	

Plaintiffs respectfully submit the enclosed decisions of the Ninth Circuit in *In re Wal-Mart Wage and Hour Employment Practices Litig.*, --- Fed.Appx. ----, 2013 WL 6623882 (9th Cir. Dec. 17, 2013) and *In re Wal-Mart Wage and Hour Employment Practices Litig.*, --- F.3d ----, 2013 WL 6605350 (9th Cir. Dec. 17, 2013) in connection with Defendants' pending motion to disqualify Arbitrator Hare in this case.

1 Plaintiffs cited and discussed Judge Pro's decision in *Wal-Mart* in their Supplemental
 2 Memorandum in Opposition to Motion to Disqualify Arbitrator filed on November 21, 2013 [Doc. 130
 3 at pp. 5-6]. Judge Pro ruled that Arbitrator Layn Phillip's failure to disclose that he had served as a
 4 mediator and future arbitrator in the *Smokeless Tobacco* litigation, in which counsel for certain parties
 5 in *Wal-Mart* was involved, was "too remote and attenuated from his role as arbitrator in the present
 6 dispute to create a reasonable impression of partiality sufficient to support vacatur." *In re Wal-Mart*
 7 *Wage and Hour Employment Practices Litig.*, 2011 WL 4809046, at *7 (D. Nev. Oct. 11, 2011).

8
 9 In its unpublished memorandum decision, the Ninth Circuit affirmed Judge Pro's decision that
 10 the non-disclosure did not create evident partiality because "[t]o the extent the arbitrator failed to
 11 disclose his role as arbitrator in the *Smokeless Tobacco* cases, it was a 'trivial' relationship without
 12 the type of **direct financial connections that raise concern and need not have been disclosed.**"
 13 *Id.* at *2, citing *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 150 (1968) (White,
 14 J., concurring) and *New Regency Prods., Inc. v. Nippon Herald Films, Inc.*, 501 F.3d 1101, 1103 (9th
 15 Cir.2007). (Emphasis added).¹

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 17 In its published decision, the Ninth Circuit found that "the statutory grounds for judicial review
 18 in the FAA are exclusive" and "that these grounds are not waivable, or subject to elimination by
 19 contract." 2013 WL 6605350 at *3 Accordingly, the Ninth Circuit held that a provision in the
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23 Although the memorandum decision is designated as "not appropriate for publication and is not
 24 precedent except as provided by 9th Cir. R. 36-3", it is properly cited and considered for its
 25 persuasive value pursuant to 9th Cir. R. 36-3 (b) and FRAP 32.1. 9th Cir. R. 36-3 (b) provides that
 26 "Unpublished dispositions and orders of this Court issued on or after January 1, 2007 may be cited
 27 to the courts of this circuit in accordance with FRAP 32.1." The Advisory Committee Notes to
 28 FRAP 32.1 provide that "Under Rule 32.1(a), a court of appeals may not prohibit a party from citing
 an unpublished opinion of a federal court for its persuasive value or for any other reason."

1 arbitration agreement that a fee dispute would be settled by “binding, non-appealable arbitration” could
2 not be construed as waiving judicial review under § 10 of the FAA, including judicial review of an
3 arbitration award for evident partiality. *Id.* at *2-3. As the Ninth Circuit observed, the narrow
4 purpose of § 10 of the FAA “is afford an **extremely limited review authority**, a limitation that is
5 designed to preserve due process but not to permit unnecessary public intrusion into private
6 arbitration.” *Id.* at *4, quoting *Kyocera Corp. v. Prudential-Bache Trade Services, Inc.*, 341 F.3d
7 987, 998 (9th Cir. 2003) (Emphasis added).
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9 By enacting § 10 of the FAA, which allows judicial review of a claim of evident partiality only
10 after an arbitration award, “Congress attempted to preserve due process while still promoting the
11 ultimate goal of speedy dispute resolution.” *Id.*
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14 DATED this 30th day of December, 2013.
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of GERARD & ASSOCIATES, and that the following documents were served via electronic service: **NOTICE OF SUPPLEMENTAL AUTHORITY PERTINENT TO DEFENDANTS' MOTION TO DISQUALIFY ARBITRATOR HARE.**

TO:

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